

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Ella Mintz	Team: Squad #12	CCRB Case #: 201709609	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Tuesday, 11/07/2017 12:24 AM	Location of Incident: [REDACTED]	Precinct: 79	18 Mo. SOL 5/7/2019	EO SOL 5/7/2019	
Date/Time CV Reported Thu, 11/09/2017 1:15 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 11/17/2017 11:19 AM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Greydy Mercedes	09619	956926	079 PCT
2. POM Mohamed Elhanafi	15082	955897	079 PCT
3. An officer			079 PCT
4. Officers			079 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Mark Perrault	04070	937275	079 PCT
2. POM Carlos Colon	07495	925095	079 PCT
3. POM Samuel Sharman	03717	945000	079 PCT
4. POM Brian Mochrie	25039	947810	079 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Greydy Mercedes	Abuse: In front of § 87(2)(b) in Brooklyn, Police Officer Greydy Mercedes stopped § 87(2)(b)	[REDACTED]
B.POM Mohamed Elhanafi	Abuse: In front of § 87(2)(b) in Brooklyn, Police Officer Mohamed Elhanafi stopped § 87(2)(b)	[REDACTED]
C.POM Greydy Mercedes	Force: In front of § 87(2)(b) in Brooklyn, Police Officer Greydy Mercedes used physical force against § 87(2)(b)	[REDACTED]
D.POM Mohamed Elhanafi	Force: In front of § 87(2)(b) in Brooklyn, Police Officer Mohamed Elhanafi used physical force against § 87(2)(b)	[REDACTED]
E. Officers	Force: In front of § 87(2)(b) in Brooklyn, officers used physical force against § 87(2)(b)	[REDACTED]
F. An officer	Force: In front of § 87(2)(b) in Brooklyn, an officer restricted § 87(2)(b)'s breathing.	[REDACTED]
G.POM Greydy Mercedes	Force: In front of § 87(2)(b) in Brooklyn, Police Officer Greydy Mercedes used physical force against § 87(2)(b)	[REDACTED]
H.POM Mohamed Elhanafi	Force: In front of § 87(2)(b) in Brooklyn, Police Officer Mohamed Elhanafi used physical force against § 87(2)(b)	[REDACTED]

Officer(s)	Allegation	Investigator Recommendation
I.POM Greydy Mercedes	Discourtesy: In front of § 87(2)(b) in Brooklyn, Police Officer Greydy Mercedes spoke discourteously to § 87(2)(b)	
J. An officer	Discourtesy: In front of § 87(2)(b) in Brooklyn, an officer spoke discourteously to § 87(2)(b)	
K.POM Greydy Mercedes	Discourtesy: Inside the 79th Precinct stationhouse, Police Officer Greydy Mercedes spoke discourteously to § 87(2)(b)	
L.POM Greydy Mercedes	Discourtesy: In front of § 87(2)(b) Hospital in Brooklyn, Police Officer Greydy Mercedes spoke discourteously to § 87(2)(b)	
§ 87(2)(g), § 87(4-b)		

Case Summary

On November 9, 2017, Sergeant Mark Perrault, of the 79th Precinct, called IAB to report this incident. The case was received by the CCRB on November 17, 2017 under log #17-45128. The case was closed pending litigation on January 29, 2018. On January 11, 2019, the case was reopened upon § 87(2)(b) request following the conclusion of his criminal case.

On November 7, 2017, Police Officers Greydy Mercedes and Mohamed Elhanafi, of the 79th Precinct, responded to a 911 call reporting a robbery. PO Mercedes and PO Elhanafi stopped § 87(2)(b) in front of § 87(2)(b) in Brooklyn and tackled him to the ground (**Allegations A and B-Abuse of Authority: § 87(2)(g)** **Allegations C and D-Force: § 87(2)(g)** An officer allegedly kned § 87(2)(b) in the neck, restricting his breathing (**Allegations E and F-Force: § 87(2)(g)**). Once on the ground, PO Elhanafi and PO Mercedes allegedly punched § 87(2)(b) (**Allegations G and H-Force: § 87(2)(g)** PO Mercedes allegedly told § 87(2)(b) to “stop fucking resisting” (**Allegation I-Discourtesy: § 87(2)(g)** An officer told § 87(2)(b) to “shut the fuck up.” (**Allegation J-Discourtesy: § 87(2)(g)** While at the 79th Precinct Stationhouse, PO Mercedes allegedly said, “Fuck you, you stupid fucking ass” to § 87(2)(b) (**Allegation K-Discourtesy: § 87(2)(g)** While in front of § 87(2)(b) Hospital, PO Mercedes allegedly called § 87(2)(b) “fucking stupid” (**Allegation L- Discourtesy: § 87(2)(g)** § 87(2)(b) was arrested and charged with robbery in the first degree, robbery in the third degree, menacing in the second degree, and criminal possession of a weapon in the fourth degree.

The investigation obtained body-worn camera footage from PO Mercedes and PO Elhanafi (Board Reviews 01, 02, 03).

Findings and Recommendations

Allegation A-Abuse of Authority: In front of § 87(2)(b) in Brooklyn, Police Officer Greydy Mercedes stopped § 87(2)(b)

Allegation B-Abuse of Authority: In front of § 87(2)(b) in Brooklyn, Police Officer Mohamed Elhanafi stopped § 87(2)(b)

Allegation C-Force: In front of § 87(2)(b) in Brooklyn, Police Officer Greydy Mercedes used physical force against § 87(2)(b)

Allegation D-Force: In front of § 87(2)(b) in Brooklyn, Police Officer Mohamed Elhanafi used physical force against § 87(2)(b)

§ 87(2)(b) testified that prior to the interaction with the police, while walking on Monroe Street between Bedford and Nostrand Avenues, § 87(2)(b) encountered two white males (identified by the investigation as § 87(2)(b) III and § 87(2)(b) (Board Review 04). One of the males bumped into § 87(2)(b) causing his Hennessy bottle to fall and break. § 87(2)(b) told the male that he needed to pay for a new bottle as he broke it. The male responded that he would pay for it but the other male (the one who did not break the bottle), said that he was going to call the police. § 87(2)(b) told the intervening male not to “start something” and § 87(2)(b) was handed the money, which was less than fifteen dollars. § 87(2)(b) denied having any weapons on his person at the time. Approximately 15 minutes later, § 87(2)(b) saw a marked police car pull up to the corner of Tompkins and Gates Avenue. PO Mercedes and PO Elhanafi exited the vehicle, which was about half a block away from where § 87(2)(b) was walking. PO Mercedes told § 87(2)(b) “Come here.” § 87(2)(b) told the officers that he did not do anything and continued walking. PO Mercedes and PO Elhanafi ran toward § 87(2)(b) PO Mercedes grabbed § 87(2)(b) by his arms and shoulders and threw him down, where he landed face down in a pile of garbage bags.

§ 87(2)(b) III told the CCRB in a phone statement that on the night of the incident, § 87(2)(b) dropped a liquor bottle, blamed it on him, pressed a sharp object (which § 87(2)(b) III believed was a “shiv”) to his stomach and robbed him for less than twenty dollars (Board Review 05). § 87(2)(b) III called the police and entered the vehicle with PO Elhanafi and PO Mercedes to canvas for § 87(2)(b) III pointed § 87(2)(b) out to the officers. When the officers stepped out of the car, § 87(2)(b) began running and the officers chased him, and tackled him to the ground.

Event number #§ 87(2)(b) shows that a 911 call was made for a robbery in progress and that the suspect was wearing a red t-shirt and had used a weapon in the course of the robbery (Board Review 06).

PO Mercedes’ body-worn camera captures this portion of the incident (Board Review 01). There is no audio for this section as it takes place in the 30 second buffer prior to PO Mercedes turning the camera on. At the beginning of the clip, at 00:30:39 in the recording, PO Mercedes is running behind PO Elhanafi. The officers run for 24 seconds until § 87(2)(b) is shown on the ground. The forcible takedown is not shown clearly on the BWC because the camera is shaking and PO Mercedes eventually gets too close to § 87(2)(b) to make out any specific movements, although it appears that PO Elhanafi reached § 87(2)(b) prior to PO Mercedes.

PO Mercedes and PO Elhanafi were generally consistent in their testimonies (Board Review 07, 08). Both officers stated that they received a radio run specifying that the complainant was robbed with a sharp object. Once the officers arrived on scene, § 87(2)(b) III reiterated his complaint of being robbed with a weapon; the officers then took him in their car to canvas for § 87(2)(b) III pointed at § 87(2)(b) and said something to the effect of “That’s the guy.” When the officers exited the car, § 87(2)(b) turned around, made eye contact, and immediately began running away. Both officers instructed § 87(2)(b) to stop but he continued running. PO Elhanafi testified that he approached § 87(2)(b) by his side, wrapped his arms around § 87(2)(b) Watkin’s waist in a bear hug, and tackled him to the ground. PO Mercedes testified that both he and PO Elhanafi grabbed one of § 87(2)(b) arms and tackled to the ground. § 87(2)(b) landed face down on the ground. The officers never recovered a weapon from § 87(2)(b) person.

The TRI reports prepared by PO Mercedes and PO Elhanafi indicate that a forcible take down was employed for the reasons of defense of self, to overcome resistance, defense of other members of service, and because of a fleeing suspect (Board Reviews 09).

People v. Debour 49 N.Y. 2d 219 (1976) allows officers to stop individuals for whom they have reasonable suspicion are engaged in criminal activity (Board Review 10).

Patrol Guide Procedure 221-01 states that all use of force must be reasonable under the circumstances and that in determining whether the use of force is reasonable, members of service should consider the nature and severity of the crime, the actions taken by the subject, the immediacy of the perceived threat or harm to the subject, members of service, or bystanders, and whether the subject is attempting to evade arrest by flight (Board Review 11).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation E-Force: In front of § 87(2)(b) in Brooklyn, officers used physical force against § 87(2)(b)

Allegation F-Force: In front of § 87(2)(b) in Brooklyn, an officer restricted § 87(2)(b) breathing.

Allegation G-Force: In front of § 87(2)(b) in Brooklyn, Police Officer Greydy Mercedes used physical force against § 87(2)(b)

Allegation H-Force: In front of § 87(2)(b) in Brooklyn, Police Officer Mohamed Elhanafi used physical force against § 87(2)(b)

Allegation J-Discourtesy: In front of § 87(2)(b) in Brooklyn, an officer spoke discourteously to § 87(2)(b)

The allegations listed above have been determined based on a combination of § 87(2)(b) testimony, BWC footage, and officer testimony.

§ 87(2)(b) testified, nearly 16 months following the incident, that immediately after he was taken to the ground, more officers arrived to the scene. PO Elhanafi put his knee on the back of § 87(2)(b) neck and put pressure on it for approximately five seconds, restricting his breathing. While PO Elhanafi's knee was on his neck, officers, although § 87(2)(b) did not know who aside from PO Mercedes, punched § 87(2)(b) approximately four to five times. § 87(2)(b) was punched below his left eye, in the back of his head, on his back, and on his sides. § 87(2)(b) did not know which officers were punching him but he believed that PO Mercedes punched him at least once. As a result of the punching, § 87(2)(b) received a scratch to the area below his left eye.

§ 87(2)(b) III stated that he could not see the physical interaction between the officers and § 87(2)(b) because he was still situated in the car.

The officers' BWC footage does not clearly capture the force used against § 87(2)(b) and does not show any officers punching § 87(2)(b). PO Elhanafi's BWC fell off of his uniform in the midst of the struggle to handcuff § 87(2)(b) (Board Review 02). PO Mercedes' BWC does not capture the physical force because PO Mercedes is so close to § 87(2)(b) that the angle of the footage does not capture any officers' hands.

At 00:31:07 in PO Mercedes' BWC footage (Board Review 01), the officers are on the ground with § 87(2)(b) repeats, "He took a bottle from me." PO Mercedes instructs § 87(2)(b) to stop moving. At 00:31:30, § 87(2)(b) asks, "Why are you hitting me like that?" The camera is moving too rapidly to discern what exactly is happening. At 00:31:42 in the recording, more officers arrive to the location and kneel on the ground and assist the officers. § 87(2)(b) is successfully handcuffed at 32:14 in the recording.

At 33:01 in PO Elhanafi's BWC footage, § 87(2)(b) says, "Excuse me sir, why do you have your feet on my back?" (Board Review 02) § 87(2)(b) is not visible at all as there are multiple officers surrounding § 87(2)(b). At 33:10 in the recording, § 87(2)(b) says, "I can't breathe.

I can't breathe. He got his foot in my back." An unknown officer responds, "If you're talking, you're breathing." Another officer then says, "Shut the fuck up."

PO Mercedes, PO Elhanafi, and Sergeant Mark Perrault all stated that no officer ever stepped or knelt on § 87(2)(b) back or neck and that no officer ever restricted § 87(2)(b) breathing in any manner. None of the officers recalled any officer telling § 87(2)(b) to “shut the fuck up” and no officer could identify the voice behind the comment following watching the BWC footage.

PO Mercedes stated that while on the ground, § 87(2)(b) flailed his arms, tried to grab PO Mercedes' wrists, and tried to push himself off the ground. When trying to push himself off the ground, § 87(2)(b) elbowed the officers. Both officers tried to wrestle his arms behind his back so they could handcuff him. While trying to get § 87(2)(b) in handcuffs, PO Mercedes punched § 87(2)(b) either two or three times in the side of § 87(2)(b) head, above his ears. PO Mercedes punched § 87(2)(b) in the head in order to overcome his resistance. PO Mercedes stated that the punches were successful in that § 87(2)(b) stopped flailing his arms after being punched and the officers were able to handcuff him. PO Elhanafi also punched § 87(2)(b) during this incident, but he did not recall where he punched him.

PO Elhanafi testified that § 87(2)(b) had his arms underneath his stomach and would not provide them to the officers. § 87(2)(b) kicked and kneed at the sides of the officers and stiffened his body so the officers were not able to get his arms out from under his chest. Both officers told § 87(2)(b) to “stop resisting” and to provide his hands; § 87(2)(b) did not abide by these instructions. After approximately two to three minutes, the officers successfully pulled § 87(2)(b) hands out from underneath his chest. § 87(2)(b) continued resisting the officers by flailing his arms and ignoring repeated commands to provide his hands. Other officers arrived at the scene at that point and assisted the officers in getting § 87(2)(b) hands from under him by holding onto his body. PO Elhanafi did not know the other officers who arrived as they work midnight tour and he typically does not. PO Elhanafi punched § 87(2)(b) twice in his side. These punches were effective in that § 87(2)(b) stopped resisting and the officers were able to handcuff him. PO Elhanafi denied punching § 87(2)(b) in the head.

Sgt. Perrault testified that by the time he arrived to the location, § 87(2)(b) was already handcuffed and he did not see any physical force used against § 87(2)(b).

Patrol Guide Procedure 221-01 states that all use of force must be reasonable under the circumstances and that in determining whether the use of force is reasonable, members of service should consider the nature and severity of the crime, the actions taken by the subject, the immediacy of the perceived threat or harm to the subject, members of service, or bystanders, and whether the subject is attempting to evade arrest by flight (Board Review 11).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation I-Discourtesy: In front of § 87(2)(b) in Brooklyn, Police Officer Greydy Mercedes spoke discourteously to § 87(2)(b)

§ 87(2)(b) did not allege that any officer spoke discourteously toward him at the scene of his arrest.

At 00:31:30 in PO Mercedes' BWC, PO Mercedes stated, "Stop fucking resisting." At the time, officers were still in the process of handcuffing § 87(2)(b)

PO Mercedes did not recall saying, "Stop fucking resisting" to § 87(2)(b) but stated that if he did make the remark, it was "in the heat of the moment." PO Mercedes stated he did not recall making any discourteous remarks toward § 87(2)(b) After watching his BWC footage, PO Mercedes stated he did not recognize the voice saying, "stop fucking resisting" and could not recognize it as his own.

PO Elhanafi did not recall hearing PO Mercedes say, "stop fucking resisting" to § 87(2)(b) but upon watching PO Mercedes' BWC footage, he identified the voice making the statement as belonging to PO Mercedes.

An officer's use of a single profanity to gain compliance during a tense street standoff with an unruly civilian does not constitute misconduct. Disciplinary Case No. 79627/04 (Board Review 12).

§ 87(2)(b), § 87(2)(g)

Allegation K-Discourtesy: Inside the 79th Precinct stationhouse, Police Officer Greydy Mercedes spoke discourteously to § 87(2)(b)

§ 87(2)(b) stated that after being taken to the cell area by PO Mercedes and PO Elhanafi, he told PO Mercedes that he was an “asshole” and that he was going to pay for what he did for him. PO Mercedes responded to this by saying, “Fuck you, you stupid fucking ass.”

Both PO Mercedes and PO Elhanafi captured the entirety of their interaction with § 87(2)(b) inside the cell area of the stationhouse. While § 87(2)(b) is cursing and yelling at the officers, the officers do not respond in kind. PO Mercedes never said, “Fuck you, you stupid fucking ass” and did not make any other profane remarks toward § 87(2)(b).

§ 87(2)(g)

Allegation L-Discourtesy: In front of § 87(2)(b) Hospital, Police Officer Greydy Mercedes spoke discourteously to § 87(2)(b)

§ 87(2)(b) testified that after the ambulance arrived at the entrance of § 87(2)(b) Hospital, PO Mercedes called § 87(2)(b) “fucking stupid.” PO Mercedes made this remark out of the earshot of the EMTs and doctors.

PO Mercedes’ BWC does not capture this portion of the incident.

PO Mercedes believed that he was the sole officer to accompany § 87(2)(b) to the hospital. PO Mercedes denied calling § 87(2)(b) “fucking stupid” or using any profanity toward them.

PO Elhanafi stated that he did not accompany § 87(2)(b) to the hospital.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(g), § 87(4-b)

Civilian and Officer CCRB Histories

- This is the first complaint in which § 87(2)(b) is a party.
- Police Officer Greydy Mercedes has been a member of service for four years and has been a subject in one CCRB complaint and one allegation, which was not substantiated. § 87(2)(g)
- Police Officer Mohamed Elhanafi has been a member of service for five years and has been a subject in three CCRB complaints and ten allegations, none of which were

substantiated. § 87(2)(g)

Mediation, Criminal, and Civil Histories

- This case was not suitable for mediation.
- A Notice of Claim request was sent to the New York City Office of the Comptroller on April 17, 2019 and the results will be added to the case file upon receipt (Board Review 15).

- § 87(2)(b)

Squad No.: _____

Investigator: _____

Signature	Print Title & Name	Date
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Squad Leader: _____

Signature	Print Title & Name	Date
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Reviewer: _____

Signature	Print Title & Name	Date
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